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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B5

Date: **MAY 10 2012**

Office: NEBRASKA SERVICE CENTER

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The approval of the preference visa petition was revoked by the Director, Nebraska Service Center. The petitioner appealed the director's decision and, on January 21, 2011, the Administrative Appeals Office (AAO) rejected the appeal as untimely and returned the case to the director for consideration as a motion to reopen. On May 5, 2011, the director granted the motion and again revoked the approval of the petition. On June 3, 2011, the petitioner appealed the director's decision which is now before the AAO. The appeal will be rejected.

In order to properly file an appeal, the affected party or the attorney or representative of record must file the complete appeal within 15 days of service of the unfavorable decision. *See* 8 C.F.R. § 205.2. If the decision was mailed, the appeal must be filed within 18 days. 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the service center director issued the decision on May 5, 2011. Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Although counsel dated the Form I-290B June 2, 2011, it was not received by the service center until June 3, 2011. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the Nebraska Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the director. If the director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.